

FCC MAIL SECTION 1

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Before the
Federal Communications Commission
Washington, D.C. 20554

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In the Matter of

Amendment of Section 73.202(b),)	
Table of Allotments,)	MM Docket No. 02-12
FM Broadcast Stations.)	RM-10356
(Ash Fork, Chino Valley, Dolan Springs,)	RM-10551
Fredonia, Gilbert, Peach Springs, Seligman and)	RM-10553
Tusayan, Arizona, Moapa Valley, Nevada, and)	RM-10554
Beaver and Cedar City, Utah))	

MEMORANDUM OPINION AND ORDER**Adopted: April 2, 2004****Released: April 5, 2004**

By the Assistant Chief, Audio Division:

1. The Audio Division Branch has before it a Petition for Reconsideration filed by jointly by NPR Phoenix, LLC ("NPR Phoenix") and Prescott Radio Partners directed to the *Report and Order* in this proceeding.¹ Entravision Holdings, LLC filed a Response. For the reasons discussed below, we are modifying our earlier action to the extent of substituting channels at Chino Valley and Gilbert, Arizona.

Background

2. At the request of Liberty Ventures III, LLC, the *Notice of Proposed Rule Making* in this proceeding proposed the allotment of Channel 285A to Ash Fork, Arizona, as a first local service.² In response to the *Notice*, NPR Phoenix and Spectrum Scan, LLC ("Spectrum Scan") filed counterproposals. NPR Phoenix proposed the allotment of Channel 285C3 to Peach Springs, Arizona, as a first local service. In order for Ash Fork to have a first local service, NPR Phoenix proposed the allotment of alternative Channel 280A to Ash Fork. To accommodate a Channel 280A allotment at Ash Fork, NPR Phoenix proposed two channel substitutions. First, NPR Phoenix proposed the substitution of Channel 267A for Channel 277A at Seligman, Arizona, and modification of the Station KZKE license to specify operation on Channel 267A. Second, it proposed the substitution of Channel 232C3 for Channel 280C3 at Chino Valley, Arizona, and modification of the Station KFPB license to specify operation on Channel 232C3.

3. The second counterproposal was filed by Spectrum Scan. Spectrum Scan proposed the allotment of Channel 285C1 to Fredonia, Arizona, which conflicted with the proposed Channel 285A allotment at Ash Fork. In order to provide a first local service at Ash Fork, Spectrum Scan proposed the allotment of alternative Channel 223A at Ash Fork. To accommodate Channel 223A at Ash Fork, Spectrum Scan proposed the allotment of alternative Channel 232A to Chino Valley in lieu of the Channel 223A allotment then being considered in MM Docket No. 01-264. In order to accommodate Channel 223A at Ash Fork, it also proposed the reallocation of Channel 224C from Dolan Springs,

¹ *Ash Fork, Chino Valley, Dolan Springs, Fredonia, Gilbert, Peach Springs, Seligman and Tusayan, Arizona, and Moapa Valley, Nevada, and Beaver and Cedar City, Utah*, 18 FCC Rcd 24706 (MB 2003).

² *Ash Fork, Arizona*, 17 FCC Rcd 1660 (MMB 2002).

Arizona, to Moapa Valley, Nevada, and modification of the Station KRRN license to specify Moapa Valley as the community of license. In order to accommodate Channel 224C at Moapa Valley, Spectrum Scan proposed the substitution of Channel 221C for Channel 223C at Cedar City, Utah, and modification of the Station KXFF license to specify operation on Channel 221C. To accommodate Channel 221C at Cedar City, Spectrum Scan proposed the substitution of Channel 222A for Channel 221A at Tusayan, Arizona, and modification of the Station KSGC license to specify operation on Channel 222A. In addition to the two counterproposals, Deborah Cornley filed a Petition for Rule Making proposing the allotment of Channel 221A to Beaver, Utah. The proposed allotment of Channel 221A to Beaver was filed by the comment date in this proceeding and conflicted with the proposed Channel 221C substitution at Cedar City. As such, this proposal was entitled to consideration in this proceeding.³ To remove this conflict, Spectrum Scan proposed the allotment of either Channel 246A or Channel 261A to Beaver.

4. After the filing of their respective counterproposals, NPR Phoenix and Spectrum Scan ascertained that their counterproposals were mutually exclusive. Specifically, the NPR Phoenix proposal for a Channel 285C3 allotment at Peach Springs conflicted with the Spectrum Scan proposal for a Channel 285C1 allotment at Fredonia. Similarly, the NPR Phoenix proposal for a Channel 232C3 substitution at Chino Valley conflicted with a Spectrum Scan proposal for a Channel 232A allotment at Chino Valley. To remove these conflicts, Spectrum Scan and NPR Phoenix filed Joint Reply Comments proposing a "Global Resolution."

5. In the *Report and Order*, we allotted Channel 285C3 to Peach Springs, Arizona, and allotted alternative Channel 267A to Ash Fork, Arizona, and Channel 278C1 to Fredonia, Arizona. These allotments provided a first local service to each of those communities. In addition, we reallocated Channel 224C from Dolan Springs, Arizona, to Moapa Valley, Nevada, and modified the Station KRRN license to specify Moapa Valley as the community of license.⁴ This provided a first local service to Moapa Valley. To accommodate Channel 224C at Moapa Valley, we substituted Channel 221C for Channel 223C at Cedar City, Utah, and modified the Station KXFF license to specify operation on Channel 221C. In order to accommodate the Channel 221C substitution at Cedar City, we substituted Channel 222A for Channel 221A at Tusayan, Arizona, and modified the Station KSGC license to specify operation on Channel 222A. To accommodate Channel 221C at Cedar City, we allotted alternative Channel 246A to Beaver, Utah, instead of the originally proposed Channel 221A.

6. In view of the alternative Channel 267A allotment at Ash Fork, it was not necessary to substitute Channel 227A for Channel 277A at Seligman and substitute Channel 232C3 for Channel 280C3 at Chino Valley to accommodate the originally proposed Channel 280A allotment at Ash Fork. Finally, in regard to the "further component" of the NPR Phoenix counterproposal, we did not substitute Channel 280C1 for Channel 280C2 at Gilbert, Arizona, and modify the Station KEDJ license to specify operation on Channel 280C1. In view of the fact that we did not upgrade Station KEDJ, NPR Phoenix filed a Petition for Reconsideration.

7. As filed, the NPR Phoenix proposal for a Channel 280C1 upgrade at Gilbert did not conflict with any proposal in this proceeding and therefore could not be considered in the context of this proceeding. Instead, the Channel 280C1 upgrade at Gilbert was merely contingent on the potential

³ See *Conflicts Between Applications and Petitions for Rule Making to Amend the FM Table of Allotments*, 6 FCC Rcd 7346 (1991), *recons. granted in part* 8 FCC Rcd 4743 (1993).

⁴ Entravision Holdings, LLC, licensee of Station KRRN, filed a Response reiterating its commitment to go forward with the change in community of license. Since the NPR Phoenix Petition for Reconsideration is not directed to this change in community of license, the Response need not be considered.

removal of Channel 280C3 from Chino Valley.⁵ However, in its counterproposal, Spectrum Scan proposed an alternative Channel 223A allotment at Ash Fork. To accommodate Channel 223A at Ash Fork, Spectrum Scan proposed the allotment of Channel 232A for Chino Valley in lieu of Channel 223A then being considered for Chino Valley in MM Docket No. 01-264. Since the Spectrum Scan proposed Channel 232A substitution at Chino Valley was in conflict with the NPR Phoenix proposed Channel 232C3 substitution at Chino Valley, we could have, as a result of the Spectrum Scan counterproposal, considered the Channel 280C1 upgrade at Gilbert and the necessary Channel 232C3 substitution at Chino Valley in the context of this proceeding. We will now do so.

8. We are substituting Channel 280C1 for Channel 280C2 at Gilbert, Arizona, and are modifying the Station KEDJ license to specify operation on Channel 280C1.⁶ This upgrade will provide additional service to approximately 1,422,795 persons. To accommodate this upgrade, we are substituting Channel 232C3 for Channel 280C3 at Chino Valley, Arizona, and are modifying the Station KFPB license to specify operation on Channel 232C3.⁷ Prescott Radio Partners, licensee of Station KFPB, has agreed to the channel substitution and change in transmitter site. NPR Phoenix has agreed to reimburse Prescott Radio Partners for the costs of changing its channel and transmitter site.⁸

9. Accordingly, pursuant to the authority contained in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61, 0.204(b), and 0.283 of the Commission's rules, IT IS ORDERED, That effective May 20, 2004, the FM Table of Allotments, Section 73.202(b) of the Commission's rules, IS AMENDED for the communities listed below, as follows:

<u>Community</u>	<u>Channel No.</u>
Chino Valley, Arizona	232C3
Gilbert, Arizona	280C1

9. IT IS FURTHER ORDERED, pursuant to Section 316(a) of the Communications Act of 1934, as amended, that the license of NPR Phoenix, LLC for Station KEDJ, Gilbert, Arizona, IS MODIFIED to specify operation on Channel 280C1 in lieu of Channel 280C2, subject to the following conditions:

- (a) Within 90 days of the effective date of this Order, the licensee shall file with the Commission a minor change application for construction permit (FCC Form 301), specifying the new facility.
- (b) Upon grant of the construction permit, program tests may be conducted in accordance with Section 73.1620 of the Commission's rules.

⁵ See *Hart, Pentwater and Coopersville, Michigan*, 19 FCC Rcd (MB 2004); *Ironton, Malden and Salem, Missouri*, 13 FCC Rcd 6584 (MMB 1998); *Indian Springs, Nevada, Mountain Pass, California, Kingman, Arizona, and St. George, Utah*, 14 FCC Rcd 10568 (MMB 1999).

⁶ The reference coordinates for the Channel 280C1 allotment at Gilbert, Arizona, are 33-25-39 and 111-28-03.

⁷ The reference coordinates for the Channel 232C3 allotment at Chino Valley, Arizona, are 34-52-03 and 112-33-04.

⁸ See *Circleville and Columbus, Ohio*, 8 FCC 2d 159 (1967).

(c) Nothing contained herein shall be construed to authorize a change in transmitter location or to avoid the necessity of filing an environmental assessment pursuant to Section 1.1307 of the Commission's rules.

10. IT IS FURTHER ORDERED, pursuant to Section 316(a) of the Communications Act of 1934, as amended, that the license of Prescott Radio Partners for Station KFPB, Chino Valley, Arizona, IS MODIFIED to specify operation on Channel 232C3 in lieu of Channel 280C3, subject to the following conditions:

(a) Within 90 days of the effective date of this Order, the licensee shall file with the Commission a minor change application for construction permit (FCC Form 301), specifying the new facility.

(b) Upon grant of the construction permit, program tests may be conducted in accordance with Section 73.1620 of the Commission's rules.

(c) Nothing contained herein shall be construed to authorize a change in transmitter location or to avoid the necessity of filing an environmental assessment pursuant to Section 1.1307 of the Commission's rules.

11. Pursuant to Sections 1.1104(1)(k) and 2(k) of the Commission's rules, any party seeking a change in community of license of an FM or television allotment and/or upgrade of a existing FM allotment, if the request is granted, must submit a rulemaking fee when filing its application to implement the change in community of license and/or upgrade. As a result of this proceeding, NPR Phoenix, LLC is required to submit a rulemaking fee in addition to the fee required for the application to effect the upgrade at the time its Form 301 application is submitted.

12. IT IS FURTHER ORDERED, That the aforementioned Petition for Reconsideration filed by NPR Phoenix, LLC and Prescott Radio Partners IS GRANTED to the extent indicated above.

13. IT IS FURTHER ORDERED, That this proceeding IS TERMINATED.

14. For further information concerning this proceeding, contact Robert Hayne, Media Bureau, (202) 418-2177.

FEDERAL COMMUNICATIONS COMMISSION

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Media Bureau